

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
(EASTERN DIVISION - BOSTON)

KIRA WAHLSTROM, Plaintiff, -against- DAVID J. HOEY, LAW OFFICES OF DAVID J. HOEY, P.C., DON C. KEENAN, D.C. KEENAN & ASSOCIATES, P.C. D/B/A THE KEENAN LAW FIRM, P.C., AND KEENAN'S KIDS FOUNDATION, INC. Defendants	Civil Case No. 1:22-cv-10792-RGS
--	----------------------------------

**PLAINTIFF'S ANSWER TO COUNTERCLAIM OF
DEFENDANTS DON C. KEENAN and D.C. KEENAN & ASSOCIATES, P.C. D/B/A
THE KEENAN LAW FIRM P.C.**

Plaintiff Kira Wahlstrom answers the Counterclaim of Defendants Don C. Keenan and D.C. Keenan & Associates P.C. d/b/a The Keenan Law Firm P.C. as follows:

PARTIES

1. Admit.
2. Admit.

RELEVANT BACKGROUND

3. Admit.
4. Admit except deny that this paragraph reflects the complete content of Paragraph 4 of the 2015 CFA. *See*, Dkt. No. 11-4, Exhibit D to First Amended Complaint.
5. Admit that Paragraph 10 of the 2015 CFA states:

(10) The Client is responsible for payment of all of the Client's former/prior counsel's reasonable attorney's fees and reasonable costs and expenses and the cost of resolving any dispute between the Client and any other prior counsel over fees or expenses relating to the claim identified in paragraph (1), except if the former/prior counsel is identified as the referring or associated counsel in paragraph (4),

6. Deny that Austin O'Toole is "former/prior counsel" and deny that O'Toole's claims are still pending against Ms. Wahlstrom as they were dismissed by the Superior Court but otherwise admit.

7. Admit.

8. Admit.

9. Deny that this paragraph's quote from the Suffolk Superior Court Order cited is complete and deny that "The Court thus confirmed as a matter of fact and law that Wahlstrom must defend, indemnify and hold Keenan harmless against all claims, suits and damages sought by O'Toole or claims/suits derivative of those brought by O'Toole, such as the instant claims asserted by Wahlstrom" but admit that the Suffolk Superior Court Order issued and discussed the 2015 CFA.

**COUNTERCLAIM
CAUSES OF ACTION**

**COUNT I
BREACH OF CONTRACT**

10. Ms. Wahlstrom repeats, adopts and incorporates all the above responses to each allegation stated above.

11. Deny.

12. Deny.

13. Deny.

14. Deny.

15. Deny.

COUNT II
INDEMNIFICATION

16. Ms. Wahlstrom repeats, adopts and incorporates all the above responses to each allegation stated above.

17. Deny.

18. Deny.

19. Deny.

20. Deny.

21. Deny.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Counterclaims fail to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Counterclaims are barred by waiver.

THIRD AFFIRMATIVE DEFENSE

The Counterclaims are barred by unclean hands.

FOURTH AFFIRMATIVE DEFENSE

The Counterclaims are barred by estoppel and/or res judicata.

FIFTH AFFIRMATIVE DEFENSE

Any damages or losses claimed or incurred by Counterclaimants were caused by the acts of third parties that were unforeseeable and beyond the control of Ms. Wahlstrom and are not the responsibility of Ms. Wahlstrom.

SIXTH AFFIRMATIVE DEFENSE

Counterclaimants failed to mitigate any damages or losses that they claim.

SEVENTH AFFIRMATIVE DEFENSE

Any damages or losses that the Counterclaimants may have suffered were not proximately caused by Ms. Wahlstrom but were caused by a person or entity for which Ms. Wahlstrom is not responsible.

EIGHTH AFFIRMATIVE DEFENSE

The Counterclaims are late and barred by the applicable statutes of limitation.

NINTH AFFIRMATIVE DEFENSE

The Counterclaims fail to state facts sufficient to establish a claim to relief that is plausible on its face.

For the foregoing reasons, Ms. Wahlstrom demands that the Counterclaims be dismissed, and judgment entered in her favor, and that she be awarded all attorneys' fees and costs.

JURY DEMAND

Ms. Wahlstrom demands a trial by jury on all issues so triable.

Dated: October 7, 2022

Respectfully submitted,

/s/ Bridget A. Zerner
Bridget A. Zerner (BBO No. 669468)
John J.E. Markham, II (BBO No. 638579)
MARKHAM READ ZERNER LLC
One Commercial Wharf West
Boston, Massachusetts 02110
Tel: (617) 523-6329
bzerner@markhamreadzerner.com
jmarkham@markhamreadzerner.com
Attorneys for the Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2022 this document was served by electronic delivery through the CM/ECF system on the registered participants as identified on the Notice of Electronic Filing, which will forward copies to Counsel of Record.

/s/ Bridget A. Zerner
Bridget A. Zerner